

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-1403

To be argued by
JOHN S. SIFFERT

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-1403

UNITED STATES OF AMERICA,

Appellee,

—v.—

WILLIAM ALTER,

Defendant-Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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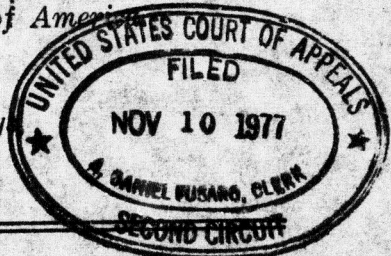




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UNITED STATES OF AMERICA,

Appellee,

—v.—

WILLIAM ALTER,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

William Alter appeals from a judgment of conviction entered on September 29, 1977 upon an order of criminal contempt pursuant to Rule 42(a), Fed. R. Crim. P., and Title 18, United States Code, Section 401(3), by the Honorable Whitman Knapp, United States District Judge.

The final order charged Alter with a violation of Title 18, United States Code, § 401(3), direct criminal contempt, for disobeying a lawful court order by refusing to answer questions propounded by the Government in the case of *United States v. Anthony Salerno*, 77 Cr. 336.* Judge Knapp sentenced Alter to six months and remanded him to jail. Alter is presently in prison pending this appeal.

* *United States v. Anthony Salerno* was a three week tax evasion prosecution which ended in a mistrial because the jury was unable to reach a verdict, having deadlocked at 11-1 in favor of conviction. A retrial will commence on November 28, 1977.

Statement of Facts

On September 13, 1977 William Alter was served with a subpoena to appear on September 15, 1977 to testify at the trial in *United States v. Anthony Salerno*. Salerno was charged with four counts of tax evasion in violation of 26 U.S.C. § 7201. Alter appeared on September 15, 1977 but was advised that the trial had been adjourned until September 19, 1977.

The *Salerno* prosecution relied upon the expenditures method of proof and included proof that gambling was the likely source of Salerno's income. The Government subpoenaed Alter for the trial in order to establish a \$4,896.27 expenditure and to show that Salerno operated a major illegal gambling operation in East Harlem. In its direct case, the Government proved that Salerno had received two checks from William Alter in the total amount of \$4,896.27. (GX 2(g)(7)).* Both checks bore the notation "loan." Alter was expected to testify that Salerno had repaid the loan, thereby establishing that Salerno did not have a non-taxable source of funds in the amount of the checks. (Tr. 811). Additionally, the Government sought to establish that Alter knew that Salerno was involved in illegal gambling operations on the basis of Alter's personal dealings as a bookmaker." ** (Tr. 811).

On September 27, 1977 the Government alerted the District Court of its intention to call Alter and the probability that Alter would refuse to testify regarding the

* "Tr." are references to pages in the transcript in *United States v. Salerno*, 77 Cr. 336. "GX" are references to Government Exhibits.

** At the trial Salerno had conceded that he was a sports wagerer, but contested that he was a bookmaker. Salerno's defense was that the money he spent did not represent current income, but instead came from a cash accumulation amassed in prior years.

source of Salerno's income. (Tr. 811). At that time, Judge Knapp tentatively expressed the view that proof of illegal gambling was irrelevant to the income tax prosecution, but that he would examine the cases cited by the Government. (Tr. 812-16). On September 28, 1977 Judge Knapp reconsidered his position, and properly ruled that proof relating to Salerno's source of income as a gambler was relevant. (Tr. 825-27).

On September 28, 1977 Alter was called as a witness. (Tr. 951). Since the Government had reason to believe that Alter would assert his Fifth Amendment privilege, the jury was excused. Alter was asked one question: "Mr. Alter, isn't it a fact that you are a bookmaker?" Alter asserted his Fifth Amendment privilege. Immunity was conferred pursuant to 18 U.S.C. §§ 6002 and 6003, and the trial court properly explained the meaning of immunity to Alter. (Tr. 953). The Assistant United States Attorney asked Alter the identical question. Rather than permit his client to answer, Robert Blossner, Esq., requested an adjournment overnight to consider whether Alter should answer the question. (Tr. 954-55). Despite the Government's vigorous opposition, Judge Knapp agreed to the adjournment in order to provide Alter with additional time to contemplate his alternatives. (Tr. 956-65).*

The next morning Arnold Wallach, Esq. was substituted as counsel for Alter, because his other attorney Robert Blossner believed he might have to testify on Alter's behalf at any contempt trial. An application for an addi-

* At that time Judge Knapp explained to Alter that the next day he would again be asked certain questions pursuant to a grant of immunity. He could answer the question truthfully or refuse to answer in which case he could be immediately cited for criminal contempt and he could be sentenced to six months in jail. The District Court further explained that alternatively the Government could present his contumacious acts to the grand jury and seek an indictment charging criminal contempt. (Tr. 966-68).

tional adjournment was denied in view of the "extraordinary" overnight adjournment. (Tr. 974). Mr. Wallach stated that Alter's voice may have been seized in the course of electronic surveillance that was conducted at the Palma Boys Club in the investigation of a gambling prosecution which is currently the subject of the indictment *United States v. Anthony Salerno, et al.*, 77 Cr. 333 (WK).^{*} Indictment 77 Cr. 333 is also pending before Judge Knapp. Mr. Wallach, who was known by Judge Knapp to be counsel of record on behalf of defendant Michael De Salvo in the gambling indictment, had received in June 1977 copies of the eavesdropping orders and applications and copies of the tapes and transcripts relating to the gambling case. (Tr. 53, June 27, 1977 pretrial conference). Mr. Wallach did not request their production anew on behalf of Alter, and he made no claim or showing that Alter's voice appeared on the tapes. Indeed, he stated that "we are in no position to know whether or not there was legal or illegal electronic surveillance." (Tr. 980).

The Assistant United States Attorney represented that he had no knowledge of any illegal electronic surveillance and that with regard to the Palma Boys Club, while Alter's name may appear on the tape, Alter's voice had not been identified.^{**} Regarding the electronic surveillance the District Court observed that Alter "has had two weeks to work this out." (Tr. 977A). Judge Knapp specifically rejected counsel's claim that the contempt proceedings were precipitous:

"Don't clutter the record with words that sound wonderful on appeal. There is nothing precipitous

^{*} *United States v. Salerno*, 77 Cr. 333 will be tried in the beginning of 1978.

^{**} Roy M. Cohn, Esq., counsel for Salerno, stated that "somebody in my office listened to some of these tapes and I believe Mr. Alter's voice was on one of them as I recall". (Tr. 977A). The transcript of May 5, 1976 at the Palma Boy's Club includes a voice identified only as "Willie".

about this. This man has had two weeks' notice about this . . . Two weeks is not precipitous." (Tr. 980).

Alter moved the District Court to rule on the prima facie validity of the applications for electronic surveillance. The Court ruled that "the only evidence you have presented to me [is that] he was in this Palma Boys Club and any surveillance there was pursuant to an order issued by Judge Wyatt." (Tr. 978). Prior to the proceedings before Judge Knapp, the eavesdropping orders pertaining to 77 Cr. 333 (WK) already had been reviewed by at least three District Judges, who had found them to be facially valid. (Tr. 978-79).

Alter next claimed that the immunity grant was not co-extensive with the demands of the Fifth Amendment (Tr. 983), and that the Government should be required to certify to the District Court any and all evidence it had against Alter in order to insure that he would not later be prosecuted on the basis of immunized testimony. (Tr. 982). The District Court rejected each of these contentions as meritless. (Tr. 986).

The Assistant United States Attorney then propounded the question: "Mr. Alter are you a bookmaker". Alter refused to answer, and (Tr. 987), stated that he understood the question. (Tr. 988). To avoid any misunderstanding about the meaning of immunity, Judge Knapp elaborated:

"You understand whatever your lawyers may have told you, I tell you you can't be prosecuted as a result of any answer you gave here, and don't listen to any of those fatuous ideas that it may invite somebody to do something, which is the silliest statement I have heard since I have been on the bench. Bear in mind, you can't be prosecuted, and bear that in mind." (Tr. 1005).

Alter was next asked by the Assistant United States Attorney: "Do you know whether Mr. Salerno, Anthony Salerno, the defendant in this case, is involved in illegal gambling?" Again Alter refused to answer. (Tr. 991). Alter said he understood he was granted immunity. Judge Knapp again instructed Alter to answer the question, and that the consequence of refusing to answer would be probably six months in jail. (Tr. 992). Alter was then asked: "Do you know Anthony Salerno?" Alter refused to answer despite the Court's instruction to do so. (Tr. 993). The Assistant United States Attorney next asked: "showing you what has been marked Government Exhibit 158 for identification, are those checks that you gave to Anthony Salerno?" Again Alter refused to answer in violation of the Court's direction. (Tr. 993). Finally, the Government asked: "Did Mr. Salerno repay you for these two checks, Government's Exhibit 158?" Again Alter refused to obey the Court's instruction to answer the question. (Tr. 994).

The Government moved for Alter to be held in contempt. Alter requested that the Court proceed with civil contempt in lieu of criminal contempt. Judge Knapp denied this application, finding:

"The trouble is the futility of that is quite apparent because, having made it perfectly clear to the witness [that] it was my intention to punish him for criminal contempt involving a six-month sentence, it would be fatuous for me to assume that civil contempt, which would have at the most a week, would have any influence on him whatsoever.

I think that it is self-defeating." (Tr. 996).

Alter's application for a stay was also denied.

A final attempt to reach an agreement between Alter and the Government regarding answers to questions about Alter's knowledge of Salerno's gambling activities failed.

Judge Knapp ruled that each question was relevant to the case and found Alter to be in contempt pursuant to Rule 42(a), F. R. Crim. P., and 18 U.S.C. § 401(3). Alter was sentenced to six months in jail. In denying a motion to reduce the sentence, Judge Knapp noted

"I think the gravity of the offense warrants six months. I think it would have warranted the government to proceed by indictment so the penalty could be higher. . . . The trial will continue for a couple of days more. If you change your mind, I will certainly consider it. I am not making any promise." (Tr. 1010).

ARGUMENT

POINT I

The Defendant's Demand That The Government Certify All of Its Evidence Against The Defendant Before The Court Compels Him To Testify Under An Immunity Grant Is No Defense In a Proceeding For Criminal Contempt.

Alter claims that the failure of the Government to certify all of its evidence against him to the District Court justified his refusal to obey a lawful court order to answer the questions propounded by the Government under a grant of immunity. This claim is without merit.

Alter entirely misconceives the rationale behind the certification procedure. Certification evolved as a practical device whereby the prosecution could meet its "heavy" burden of showing that its subsequent prosecution of an immunized witness is based on "an independent, legitimate source for the disputed evidence" which is not tainted by the immunized testimony. E.g. *Kastigar v. United States*, 406 U.S. 441, 460 (1972); *Murphy v. Waterfront Commission of N.Y. Harbor*, 378 U.S. 52, 79 n. 18 (1964);

United States v. Nemes, 555 F.2d 51, 54-55 (2d Cir. 1977). The concept of certification simply has no relevance as a defense to the initial proceedings to compel the testimony or to hold the witness in contempt. As Judge Knapp observed:

"The government would be well advised if they intend to prosecute [Alter] to give such a [certification]. However, that is not my province. It is the government's obligation to prove at trial, if they ever decide to prosecute this man that they didn't use [his immunized testimony] and such a statement as you now suggest would be a good help to them. However, that is their problem and if he ever gets indicted . . . it will be up to the prosecuting authorities to prove [that] nothing he said here actually . . . would give any lead to nibble." (Tr. 983).

Alter cites absolutely no authority for his present claim that the Government's failure to certify its evidence against an immunized witness is a valid defense in contempt proceedings. Indeed, our own research indicates there is no authority for Alter position.* Since the con-

* Alter also suggests that he was justified in refusing to answer because he feared that at a subsequent prosecution he would have to establish that his answers were in "good faith" responsive to the questions. The claim is without merit, since Judge Knapp properly held that Alter could not confess to irrelevant crimes in the hopes of conferring a broader immunity upon himself. (Tr. 953). In *Zicarelli v. New Jersey State Commission of Investigation*, 406 U.S. 472, 476 (1972), the Supreme Court held that a statute providing for immunity as to a "responsive answer" was coextensive with the Fifth Amendment protections. Moreover, this claim was not raised below and was therefore waived. A defendant cannot raise a defense for the first time on appeal. See *United States v. Fuentes*, Dkt. No. 77-1083, slip op. 5883, 5889-90 (2d Cir. Sept. 14, 1977); *United States v. Braunig*, 553 F.2d 777 (2d Cir. 1977), cert. denied, 45 U.S.L.W. 3790 (June 7, 1977).

cept of certification evolved from a desire to safeguard against the dangers of taint, which has no bearing on the legitimacy of a refusal to testify after immunity has been conferred, Alter's claim is without merit.

Alter's related claim is that 18 U.S.C. § 6002, as applied, violates the Fifth Amendment. In *Kastigar v. United States*, *supra*, the Supreme Court held that the use immunity provisions of 18 U.S.C. § 6001 et seq. were co-extensive with the Fifth Amendment, and thus a witness receiving use immunity could not assert his Fifth Amendment privilege and refuse to testify. A grant of immunity was conferred upon Alter. Since *Kastigar v. United States* has not been overruled or limited, Alter had no legal justification to refuse to answer the questions. See *United States v. Beradelli*, Dkt. No. 77-1132, slip op. 6263, (2d Cir. Oct. 13, 1977).

POINT II

The District Court Properly Held That Alter Made An Insufficient Showing Of Illegal Electronic Surveillance.

Alter advances a variety of arguments relating to electronic surveillance. He claims that the District Court deprived him of the opportunity to defend the contempt charge on the ground of unlawful electronic surveillance by failing to order disclosure of the applications, warrants and orders for electronic surveillance. Alter further contends that the Government did not adequately deny the existence of illegal electronic surveillance under Title 18 U.S.C. § 3504. These claims are erroneous.

Alter's extraordinary and inexcusable tardiness in raising any claim relating to the electronic surveillance until the morning that he was held in contempt constitutes a waiver of that claim. Alter was subpoenaed to testify on

the first day of trial, which had been scheduled for September 15, 1977; the subpoena was served prior to the commencement of trial. Alter appeared in compliance with the subpoena on September 15, 1977, when he was informed that the trial was adjourned until September 19, 1977. On September 28, 1977 Alter was called as a witness, and asked certain questions. He refused to answer the questions and asserted his Fifth Amendment privilege. A grant of immunity was conferred upon Alter and he still refused to respond to the questions. Judge Knapp decided to give Alter the evening to consider whether he would respond to the questions or face contempt charges. The following morning, Alter returned to Court and made his claim pursuant to 18 U.S.C. § 3504.* After refusing to answer the Government's relevant questions despite the immunity grant Alter was held in contempt.

Under the facts of this case Alter had ample time—at least two weeks—to raise a claim of unlawful electronic surveillance. His failure to raise that claim until the last possible moment constitutes a deliberate effort to disrupt the criminal trial and is a waiver of the electronic surveillance issue.

This Court's decision in *United States v. Yanagita*, 552 F.2d 940 (2d Cir. 1977) is directly on point. In *Yanagita* the witness waited until the morning of trial

* At the court session the previous day Alter's counsel referred to electronic surveillance. (Tr. 954). There was no mention at that time of Alter's intention to refuse to answer questions because the questions were derived from unlawful electronic surveillance, and the Government was not requested to affirm or deny electronic surveillance pursuant to 18 U.S.C. § 3504. In any event as we demonstrate in this section of our brief, whether Alter first made the electronic surveillance claim on September 28 or 29 is not important. What is significant is that Alter could have readily raised this claim at a far earlier date, and his tardiness must constitute a waiver.

to raise his claim under 18 U.S.C. § 3504. The Court held that balancing a number of factors * compelled the conclusion that the failure to assert the § 3504 claim until the morning of trial rendered it untimely. In the instant case Alter did not even make his claim on the morning of trial. Rather the claim was made two weeks after the trial had commenced, on the very day he was suppose to testify, and at a time shortly before the Government intended to rest its case.

There is simply no reason to justify this extreme tardiness in waiting until the last possible moment to make the § 3504 claim. It is apparent that the raising of this issue was a mere afterthought designed to disrupt the Government's presentation of its case. Judge Mansfield's opinion in *United States v. Yanagita*, *supra*, 552 F.2d at 945 is particularly instructive in evaluating Alter's appeal:

"The necessity for their (judge, counsel, defendants, witnesses, jurors) coordinated presence renders it (a trial) a fragile procedure at best, which can be destroyed or subjected to horrendously wasteful delay because of non-participation on the part of any of the essential figures. . . . Disruption through contrived maneuvering under the guise of § 3504 or even a casual attitude on the part of witnesses or their counsel is to be discouraged.**

See also *United States v. Wilson*, 421 U.S. 309 (1975).

** Judge Mansfield referred to a number of factors that should be examined to determine timeliness of the § 3504 claim: the type of proceeding, the stage of the proceeding, the opportunity to raise the issue at a prior time, the scope of the intended examination, the period of time between the service of the subpoena and the § 3504 request, the time required for an agency check, and the disruption caused by the witness' claims. 552 F.2d at 943.

** This Court in construing 18 U.S.C. § 3504 has stated that the statute should not be construed in a manner that disrupts the orderly functioning of grand jury investigations. *In re Archuleta*, Dkt. No. 77-1286, slip op. 5321 (2d Cir. Aug. 19,

[Footnote continued on following page]

Indeed, 18 U.S.C. § 2518(10)(a) requires that a motion to suppress be made "before the trial, hearing, or proceeding," and the failure to raise the issue until the proceeding commences constitutes a waiver. *United States v. Sisca*, 503 F.2d 1337 (2d Cir.), *cert. denied*, 419 U.S. 1008 (1974). In any event, three other District Court Judges already have ruled that the electronic Surveillance orders involved in 77 Cr. 333 (WK) were sufficient.* (Tr. 978-79).

The further claim that defense counsel did not have the documents necessary to prepare a defense based on unlawful electronic surveillance is similarly unavailing. When Alter first raised the subject of electronic surveillance at the Palma Boys Club, the Assistant United States Attorney affirmed the existence of certain court authorized electronic surveillance but stated he did not know if Alter's voice had been intercepted. The record contains no request by Alter's counsel for copies of the applications, warrants and orders for the electronic surveillance that the Government had conducted in which

1977); *United States v. Grusse*, 515 F.2d 157 (2d Cir. 1975); *In re Persico*, 491 F.2d 1156 (2d Cir. 1974). The need to insure that a witness does not misuse § 3504 during a trial is even greater than during a grand jury investigation. If witnesses confronted with summary contempt are permitted to raise a § 3504 claim well into the trial when that claim could have been raised at an earlier time, the fair and expeditious conduct of criminal trials will be at the peril of contumacious witnesses who may be reluctant to testify against the defendant for reasons having nothing to do with self-incrimination.

* At the contempt hearing Judge Knapp was informed by the Assistant United States Attorney that Judge Van Pelt Bryan had reviewed the wiretap orders, application, and underlying authorizations, and found that they were in order and complied with the relevant law. Judge Lasker also reviewed the order and wrote that "[r]eview of the order itself and affidavit submitted to me in support of the Government's application for the order, discloses that the order is facially sufficient and that all statutory requirements were met." Judge Duffy made a similar finding. (Tr. 978-79).

Alter may have been overheard. Alter made no further demand that the Government affirm or deny the existence of any other electronic surveillance.*

The electronic surveillance referred to by the Assistant United States Attorney was the basis for the gambling indictment in *United States v. Salerno*, 77 Cr. 333 (WK). Mr. Wallach, who represented Alter before Judge Knapp and raised the electronic surveillance issue represents a defendant in *United States v. Salerno*, 77 Cr. 333, and had in his possession for three months prior to the contempt proceedings, the tapes, transcripts, wiretaps, orders, and other documents he now claims he needed in order to defend Alter against the contempt charge. (Tr. 53, June 27, 1977 hearing). Moreover, counsel never made any claim that there were any electronic surveillances other than those that pertained to Indictment 77 Cr. 333; nor was there any showing that those eavesdropping orders were illegal.

POINT III

The District Court Properly Cited Alter For Summary Criminal Contempt.

Alter claims that Judge Knapp should have found him in civil contempt, and erred in finding him in criminal contempt. This claim misconstrues the relevant law.

Judge Knapp specifically rejected Alter's request to be held in civil contempt, as "self-defeating" and "futile". (Tr. 996). Since Judge Knapp had "made it perfectly clear to the witness [that] it was my intention to punish

* The Government need not affirm or deny the existence of electronic surveillance whenever a witness makes a claim pursuant to § 3504. See *In re Archuleta*, Dkt. No. 77-1286 slip op. 5321 (August 19, 1977); *United States v. Yanagita*, 552 F.2d 940 (2d Cir. 1977); *In re Millow*, 529 F.2d 770 (2d Cir. 1976); *In re Persico*, 491 F.2d 1156 (2d Cir. 1974).

him for criminal contempt involving a six month sentence, it would be fatuous for me to assume that civil contempt, which would have at the most a week, would have any influence on him whatsoever". (Tr. 996). Thus, Judge Knapp held Alter in summary criminal contempt pursuant to Rule 42(a), Fed. R. Crim. P. In order to provide Alter with another opportunity to testify, Judge Knapp suggested that he would reconsider the six month sentence if Alter decided to testify in the next few days.

The Supreme Court, in a virtually identical factual setting, upheld a District Court's summary contempt order:

"In an ongoing trial, with the Judge, jurors, counsel and witnesses all waiting, Rule 42(a) provides an appropriate remedial tool to discourage witnesses from contumacious refusals to comply with lawful orders essential to prevent a breakdown of the proceedings".

United States v. Wilson, 421 U.S. 309, 319 (1975). *Shillitani v. United States*, 384 U.S. 364 (1966), relied upon by Alter, was distinguished by the Court in *United States v. Wilson* on the ground that in *Wilson* "the threat of immediate confinement of civil contempt would have provided little incentive for them to testify". 421 at 317 n.9. Judge Knapp similarly found that civil contempt, with the threat of a few days' imprisonment, would have no beneficially coercive effect since the explicit threat of criminal contempt and six months incarceration did not provoke responses to the questions.* (Tr. 996). Judge

* Judge Knapp followed the same course in dealing with Alter that the Supreme Court approved of in *United States v. Wilson*, 421 U.S. 309, 317, n.9 (1966). Both Judge Knapp and the trial court in *Wilson* made it clear to the defendant that if he relented and obeyed the order to testify he would consider reducing the sentence.

Knapp was entitled to conclude that in the circumstances of this case where the contempt had occurred towards the end of the trial, the punitive and deterrent purposes served by criminal contempt were mandated rather than the coercive effect of civil contempt.

POINT IV

Alter's Sentence Was Not Excessive.

Alter claims that his six month sentence was excessive. Judge Knapp did not abuse his discretion in imposing a six month sentence.* Alter's contumacious conduct in refusing to answer relevant and significant questions despite the lack of any legal justification was a serious offense and this egregious conduct clearly merited a six month sentence.** As Judge Knapp observed in denying Alter's motion to reduce his sentence:

"I think the gravity of the offense warrants six months. I think it would have warranted the Government to proceed by indictment so the penalty could be higher" (Tr. 1010).

* It is well settled that absent reliance on improper considerations or materially incorrect information, a sentence which does not exceed the maximum provided by law is not reviewable. *United States v. Mejias*, 552 F.2d 435 (2d Cir. 1977); *United States v. Wiley*, 519 F.2d 1348, 1351 (2d Cir. 1975); *United States v. Tramunti*, 513 F.2d 1877, 1120 (2d Cir.), cert. denied, 423 U.S. 832 (1975). Contempt sentences typically are reviewable, but that is only because there is no maximum penalty provided by law. *Green v. United States*, 356 U.S. 165, 188 (1958). In the case of summary contempt where the maximum penalty is six months, the rationale of *Green v. United States* does not apply, and a summary contempt sentence not in excess of six months should not be reviewable.

** See *United States v. Beradelli*, Dkt. No. 77-1132, slip op. 6263, 6274 (2d Cir. October 13, 1977) where this Court affirmed a five year sentence for criminal contempt.

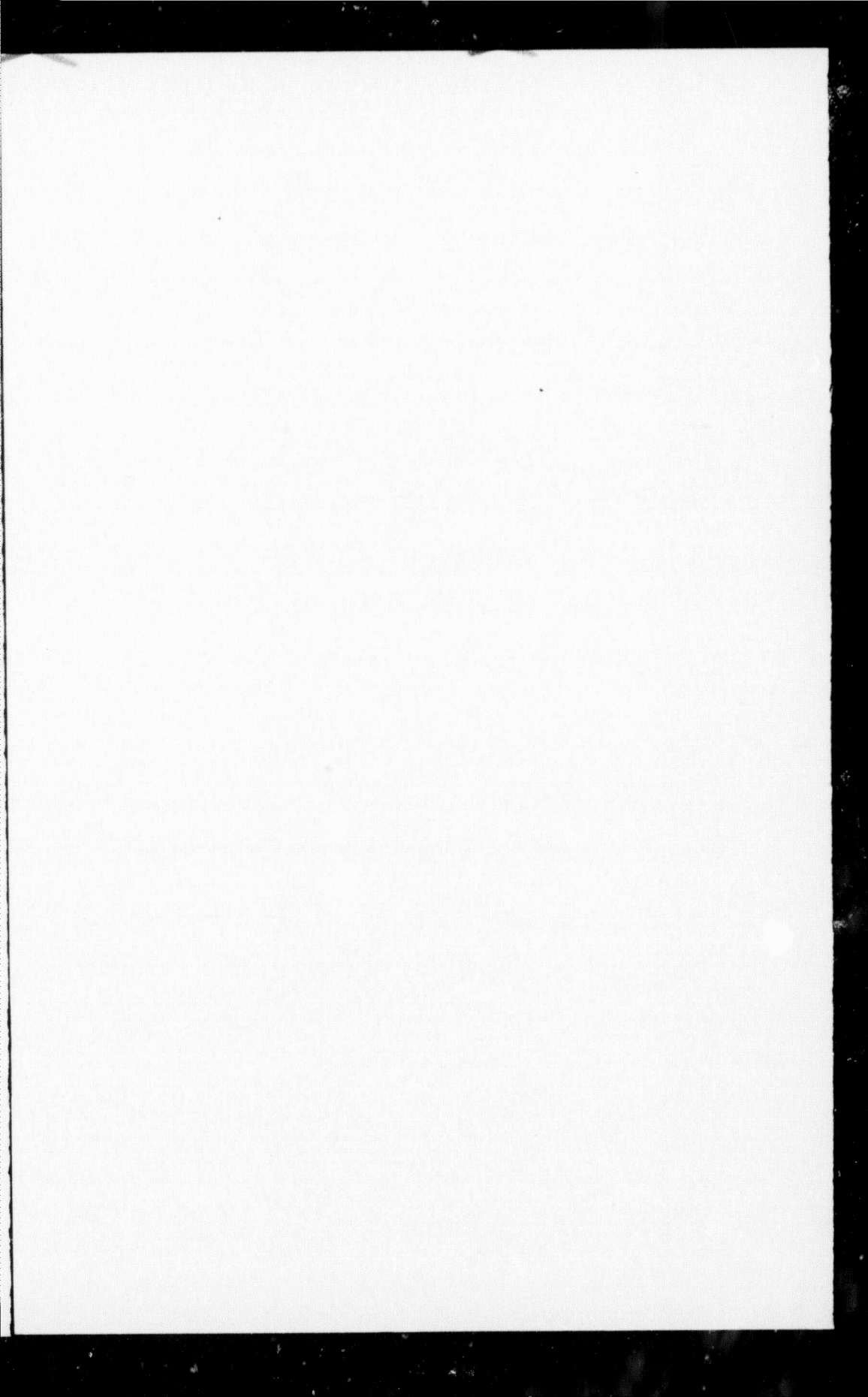
CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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Form 279 - Affidavit of Service by Mail

AFFIDAVIT OF MAILING

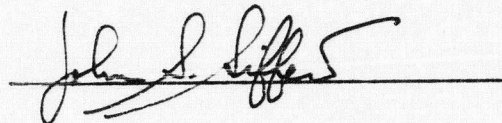
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

John S. Siffert being duly sworn,
deposes and says that he is employed in the office
of the United States Attorney for the Southern District
of New York.

That on the *10th* day of *November*
he served *2* copies of the within *briefs*
by placing the same in a properly postpaid franked
envelope addressed:

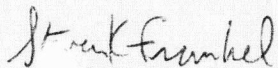
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11 Park Place
New York N.Y. 10007

envelope and placed the same in the mail chute drop for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.



Sworn to before me this

10th day of November, 1977.



STEVEN K. FRANKEL
Notary Public, State of New York
No. 24-4007105
Qualified in Kings County
Commission Expires March 30, 1979